

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

HONORABLE DAVID E. PEEBLES

UNIFORM PRETRIAL SCHEDULING ORDER

vs.

Civil No. -CV-

Counsel for all parties having reported as directed by the Court on the status of this action, which is being heard by a United States Magistrate Judge on consent of the parties pursuant to 28 U.S.C. § 636(c), and the Court having considered the positions of the respective counsel regarding a schedule for the progression of the case,

IT IS ORDERED that:

- 1) THE DEADLINES SET IN THIS SCHEDULING ORDER ARE FIRM AND WILL NOT BE EXTENDED, EVEN BY STIPULATION OF THE PARTIES, ABSENT GOOD CAUSE.** See Fed. R. Civ. P. 16(b).
- 2) VENUE MOTIONS** are to be filed **within sixty (60) days of the date of this Order** following the procedures set forth in Northern District of Local Rule ("L.R.") 7.1(b)(2) and are to be made returnable before the assigned Magistrate Judge.
- 3) JURISDICTION MOTIONS** are to be filed **within sixty (60) days of the date of this Order** and are to be made returnable before the assigned Magistrate Judge, following the procedures set forth in L.R. 7.1(b)(2).

4) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before _____.

5) AMENDMENT OF PLEADINGS: Any application to amend any pleading in this action shall be made on or before _____.

6) DISCOVERY: All discovery in this matter is to be **completed** on or before _____. Service of discovery requests must be made a sufficient number of days before this deadline to allow responses to be served before the cut-off, including adding three days in the event of service by mail under Fed. R. Civ. P. 6(e). See L.R. 16.2.

Special procedures for management of expert witnesses:

There shall be binding disclosure of the identity of expert witnesses (including a curriculum vitae) as set forth below.

(a) Expert Reports. With regard to experts who are retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony:

(1) No later than **ninety (90) days prior to the discovery deadline** set in paragraph 6 above _____, **plaintiff** shall identify such expert(s) and unless waived shall serve on the other parties the expert's written report containing the information required in Fed. R. Civ. P. 26(a)(2)(B).

(2) No later than **forty-five (45) days prior to the discovery deadline** set in paragraph 6 above _____ **defendant(s)** shall identify such expert(s) and unless waived shall serve on the other parties the expert's written report containing the information required in Fed. R. Civ. P. 26(a)(2)(B).

(3) No depositions of experts shall be taken until **after** the exchange of the above referenced expert reports.

(4) No later than thirty (30) days prior to the discovery deadline set in paragraph 6 above _____, the parties must identify any and all experts who will contradict or rebut evidence on the same subject matter identified by another party under subparagraphs 6(a)(1) and (2) above, and unless waived shall serve on the other parties such expert's written report containing the information required in Fed. R. Civ. P. 26(a)(2)(B).

NOTE: If a **treating physician** is expected to be called as a witness, he or she must be identified **at least ninety (90) days prior to the close of discovery**. The production of written reports prepared by treating physicians pursuant to Fed. R. Civ. P. 26(a)(2)(B) is encouraged as an aid to settlement but is not required by the Court. (See Notes of Advisory Committee on Rules - 1993 Amendment).

- (b)** The failure to comply with the deadlines set forth in subparagraph (a) above may result in the imposition of sanctions, including the preclusion of testimony, pursuant to Fed. R. Civ. P. 16(f).
- (c)** In order to avoid the possibility of the unavailability of an expert witness at the time set for trial, counsel may preserve the testimony of such witness as outlined in paragraph 11(B)(2) below for use at trial, and should be prepared for the possibility that the trial will proceed without such testimony if the testimony is not preserved.

7) MOTIONS other than those made under paragraphs 2 and 3 above are to be **filed** on or before _____:

- a) **DISCOVERY MOTIONS.** Discovery motions shall **NOT** be filed until after a conference with the Magistrate Judge, which is to be arranged through the Courtroom Deputy Clerk assigned to the Magistrate Judge. Before requesting such a conference to resolve discovery disputes, the parties must have complied with L.R. 7.1(d).
- b) Non-discovery motions. All non-discovery motions, whether dispositive or non-dispositive, shall be filed in accordance with N.D.N.Y.L.R. 7.1(b)(2) and shall be made returnable before the assigned Magistrate Judge. **Unless excused by the court, oral argument shall be required on all motions filed in the case.**

8) **TRIAL DATES:**

(a) **When no dispositive motion is filed and pending**, the motion filing deadline becomes the trial ready date. In such a case the Court will issue a notice scheduling a Final Pretrial Conference in order to discuss outstanding issues and set a trial date. Counsel may contact Magistrate Judge Peebles' Courtroom Deputy Clerk at any time, to request that a settlement conference or trial date be scheduled.

(b) **When a dispositive motion is filed, and provided that the motion filing deadline HAS expired**, the case is marked trial ready upon issuance of the motion decision. PLAINTIFF'S COUNSEL shall contact Magistrate Peebles' Courtroom Deputy Clerk within one week after receiving the Court's decision on the motion, to request the scheduling of a Final Pretrial Conference.

(c) **When a dispositive motion is filed, and the motion filing deadline HAS NOT expired**, the case will continue in accordance with the pretrial schedule previously set in this Rule 16 Uniform Pretrial Scheduling Order. Any request for an extension of the Rule 16 Uniform Pretrial Scheduling Order deadline(s) will be addressed by the assigned magistrate judge.

It is anticipated that the trial will take approximately ___ day(s) to complete.

This is a ____ trial. The parties request that the trial be held in _____, New York.

8(a) - Witness Availability for Trial:

The unavailability of any witness, expert or otherwise, will not be grounds for a continuance. To avoid a trial going forward without the testimony of an unavailable witness, counsel shall preserve the appropriate testimony, for trial, by written or video-taped deposition.

9) FINAL PRETRIAL CONFERENCE: As indicated above a final pretrial conference will be scheduled by the Court prior to the trial either sua sponte or as requested by the parties. At that conference the parties should be prepared to fully address any pretrial issues which exist in the action and to advise the court concerning settlement discussions which have occurred.

10) ASSESSMENT OF JUROR COSTS: The parties are advised that pursuant to L.R. 47.3, whenever any civil action scheduled for a jury trial is postponed, settled, or otherwise disposed of in advance of the actual trial, then, except for good cause shown, all juror costs, including Marshal's fees, mileage, and per diem expenses, shall be assessed against the parties and/or their counsel as directed by the Court, unless the Court and the Clerk's Office are notified at least one (1) full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will be unnecessary for them to attend.

11) PRETRIAL SUBMISSIONS

Mandatory Fed. R. Civ. P. 26(a)(3) Disclosures (Jury and Non-Jury Cases)

i) **Not later than thirty days before the Trial Date** counsel shall provide to all other parties and file with the Court **in duplicate** the disclosures required under Fed. R. Civ. P. 26(a)(3).

Note: The unavailability of any witness, expert or otherwise, will not be grounds for a continuance. In order to avoid the

possibility of going forward with the trial without the testimony of an unavailable witness, counsel, where appropriate, shall preserve such testimony before the Trial Date by written or video-taped deposition for possible use at trial. Please refer to the attached instruction sheet for the use of video-taped depositions.

Those initial pretrial disclosures must include the following:

a) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition (including video-taped deposition), specifically identifying the pertinent portions of the deposition testimony to be offered; and

c) An identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

ii) Within fourteen days after service of the Rule 26(a)(3) initial pretrial disclosures, any party served with such Rule 26(a)(3) disclosures shall serve and file with the court **in duplicate** a list of any objections to the proposed use of deposition testimony designated by another party and objections to the admissibility of exhibits described in the initial disclosures, together with a summary of the grounds for objection.

Note: All objections not disclosed in a timely manner in accordance with this rule, other than objections under Fed. R. Evid. 402 and 403, are waived unless excused by the Court for good cause.

iii) Non-Jury Trials: One week before the Trial Date counsel shall submit to the Clerk's Office their joint pretrial stipulation **in duplicate**

(see subparagraph A below) and all depositions (including video-taped depositions) to be used at trial (see subparagraph D below). In addition to this and the required mandatory pretrial disclosures referenced above (*i.e.*, witness, deposition excerpt, and exhibit lists), **one week before the Trial Date** counsel for each party shall submit to the Clerk's Office **in duplicate**, with a copy to opposing counsel, **(1)** prepared findings of fact and conclusions of law; **(2)** a letter brief concerning any evidentiary issues (see subparagraph C below); and **(3)** a trial brief (see subparagraph E below).

iv) Jury Trials: One week before the Trial Date counsel shall submit to the Clerk's Office their joint pretrial stipulation **in duplicate** (see subparagraph A below) and all depositions (including video-taped depositions) to be used at trial (see subparagraph D below). In addition, **one week before the Trial Date** counsel for each party shall submit to the Clerk's Office **in duplicate**, with a copy to opposing counsel, **(1)** Court Ordered Voir Dire (attachment #1); **(2)** proposed voir dire; **(3)** a letter brief concerning any evidentiary issues (see subparagraph C below); **(4)** a trial brief (see subparagraph E below); and **(5)** requests to charge, including a proposed Special Verdict Questionnaire (see subparagraph F below).

(A) PRETRIAL STIPULATIONS: A joint pretrial stipulation shall be subscribed by counsel for all parties and shall be filed with the Clerk's Office **in duplicate** **one week before the Trial Date** and shall contain:

- (1)** The basis of federal jurisdiction;
- (2)** A list of all exhibits which can be stipulated into evidence or which will be offered without objection as to foundation;
- (3)** Relevant (a) facts not in dispute, (b) facts in dispute, and (c) issues of law to be considered and applied by the Court.

(B) EXHIBITS: All exhibits shall be marked for identification in the manner prescribed below prior to the filing of the trial briefs. A complete set of copies of the exhibits, along with the original and one copy of the exhibit list (see subparagraph 1 below), shall be presented to the Judge's Courtroom Deputy Clerk at the beginning of the trial.

The exhibits shall have been inspected by the opposing party and copied at their expense (unless waived) **NO LATER THAN ONE WEEK PRIOR TO THE Trial Date**. All documents and/or papers intended as exhibits or to be used during the course of trial, including but not limited to documents, photographs, charts, diagrams, etc., shall be assembled in **BINDERS** with each document properly marked at the lower right corner for identification purposes as directed below. In voluminous cases, consult with the Judge's Courtroom Deputy Clerk for the proper procedure to follow.

***NOTE:** During the course of trial the Courtroom Deputy Clerk shall take charge of exhibits which are received into evidence. At the conclusion of the trial, the Deputy Clerk will immediately return all of the exhibits to the proper parties. It is the responsibility of the parties to maintain the exhibits and to produce the exhibits for any appeal.

(1) **EXHIBIT LISTS:** The exhibits shall be listed on the form prescribed by the Court, a copy of which is attached to this Order. Counsel are to supply all the requested information with the exception of the two "Date Boxes" which should remain blank. The original and one copy of the exhibit list shall be given to the Judge's Courtroom Deputy Clerk along with the exhibits at the beginning of the trial.

(2) **EXHIBIT MARKERS:** Counsel shall fill in the appropriate markers leaving the "File" and "Deputy Clerk" lines blank. All exhibits shall be assigned numbers by using a prefix of "P" for plaintiff, "D" for defendant, and "G" for Government (U.S. Attorney).

Plaintiff's exhibits should be denoted as: P-1, P-2, P-3, etc.
Defendant's exhibits should be denoted as: D-1, D-2, D-3, etc.
Government's exhibits should be denoted as: G-1, G-2, G-3, etc. In cases involving multiple defendants, the exhibits shall be denoted with the initial of the last name of the defendant and its numerical identification number.

Stickers shall be affixed whenever possible to the lower right-hand corner of the exhibit. If the exhibit marker is going to cover any information on the exhibit, then affix the marker to the reverse side of the exhibit. Each exhibit shall also have an exhibit number in the upper right hand corner of the

exhibit. (P-1, P-2, etc. or D-1, D-2, etc.)

(C) EVIDENTIARY ISSUES (Motions in Limine): One week before the Trial Date counsel shall file with the Clerk's Office, **in duplicate**, with a copy to opposing counsel, a letter brief containing a concise statement of any and all evidentiary issues to be presented upon trial, citing the applicable rules of evidence and case law.

(D) DEPOSITIONS: All depositions (including video-taped depositions) to be used at trial shall be filed with the Clerk's Office **at least one week before the Trial Date**. Not less than thirty days prior to the Trial Date, each party shall indicate to the other party the portion of the deposition to be offered (see Mandatory Disclosure Provisions, above). To the extent possible, objections are to be resolved between the parties. Areas of unresolved disagreement shall be presented to the Court for ruling not later than one week prior to the Trial Date. (See attached instruction sheet for use of video-taped depositions.)

(E) TRIAL BRIEFS: One week before the Trial Date counsel shall file with the Clerk's Office **in duplicate**, with a copy to opposing counsel a trial brief containing argument and citations on any and all disputed issues of law, citing the applicable rules of evidence and case law.

(F) REQUESTS TO CHARGE: One week before the Trial Date, counsel shall file with the Clerk's Office a request to charge and a proposed Special Verdict Questionnaire on a 3.5-inch computer disk, preferably in WordPerfect format, and on paper **in duplicate**, with a copy to opposing counsel. The request to charge need only include instructions that are specific to the law in this case regarding liability, damages, and any unusual issues. The Court has the usual boilerplate charge.

(G) Alternate Dispute Resolution:

This action has been : ☐ designated for, participation in the district's ADR program.
 ☐ opted out of,

The court has discussed the available ADR options with the parties and they have elected to participate in:

- ☐ Mediation;
- ☐ Arbitration;
- ☐ Early Neutral Evaluation;

Within 10 days of the issuance of this Order, the parties are directed to confer and select a neutral of their choice from a list of Court approved neutrals. This list can be found on the Court's web page at <http://www.nynd.uscourts.gov/adr.htm>. The parties shall contact the agreed upon neutral, ensure that the neutral does not have a conflict with any of the parties in the case and schedule a time to conduct the proceeding.

After the parties have selected a neutral, they are directed to execute a stipulation setting forth the name of the agreed upon neutral and file the stipulation with the Court's ADR Administrator. A form stipulation selecting a neutral can be found at the Court's web page at <http://www.nynd.uscourts.gov/pdf/adr/adrstip.pdf>.

The stipulation should be forwarded to:

April Hudson – ADR Administrator
U.S. District Court for the Northern District of New York
James Hanley Federal Building
P.O. Box 7367
100 South Clinton Street
Syracuse, NY 13261-7367

If the parties cannot agree on a neutral, they are directed to contact the ADR Administrator who will appoint one from the list of Court approved neutrals. The ADR Administrator can be reached at 315-234-8558. Failure to select a neutral or contact the ADR Administrator within the time frame allotted may result in disciplinary action.

The parties are directed to complete their ADR program_____

Dated:
Syracuse, NY

David E. Peebles
United States Magistrate Judge

COURT ORDERED VOIR DIRE
TO BE USED BY THE JUDGE AT TRIAL

CASE TITLE:

CIVIL ACTION NO.:

ASSIGNED JUDGE OR MAGISTRATE JUDGE:

ATTACHMENT #(1)

Each attorney is required to submit the following information on behalf of his/her client for use by the Court during Voir Dire and must be filed with the Court fifteen (15) days in advance of the scheduled trial ready date.

NAMES AND ADDRESSES OF ALL PARTIES TO THE LAWSUIT:

(use additional page if necessary)

YOUR NAME, FIRM NAME, ADDRESS AND THE NAME OF ANY PARTNER OR ASSOCIATE WHO MAY BE AT COUNSEL TABLE DURING THE COURSE OF THE TRIAL.

(use additional page if necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL LAY WITNESSES TO BE CALLED.

(use additional page if necessary)

SET FORTH THE NAMES AND ADDRESSES OF ALL EXPERT WITNESSES TO BE CALLED GIVING A BRIEF DESCRIPTION OF THEIR AREAS OF EXPERTISE.

(use additional page if necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY CAUSE OF ACTION IN THE COMPLAINT.

(use additional page if necessary)

SET FORTH A BRIEF DESCRIPTION OF EACH AND EVERY AFFIRMATIVE DEFENSE ASSERTED AS WELL AS A STATEMENT ADDRESSING ANY COUNTERCLAIMS RAISED IN THE ANSWER.

(use additional page if necessary)

PLEASE TAKE NOTICE that any delay in jury selection occasioned by the failure to provide this information will be explained to the jury as to the extent of the delay and the attorney causing same and if the delay causes a one (1) day or more postponement of this trial, appropriate monetary sanctions will be imposed by the Court.

Submitted by:

Date:

FINAL PRETRIAL ORDER - CONTINUED.

INSTRUCTIONS FOR THE USE OF VIDEOTAPED DEPOSITIONS

COUNSEL ARE TO VIEW ALL VIDEOTAPES WHICH MAY BE OFFERED INTO EVIDENCE AT THE TIME OF TRIAL, AND SUBMIT ALL OBJECTIONS IN WRITING, ALONG WITH THE VIDEOTAPE(S), TO THE COURT FOR RULING PRIOR TO TRIAL. COUNSEL ARE TO SUBMIT THE OBJECTIONS AND VIDEOTAPE(S) AT LEAST FIFTEEN (15) DAYS PRIOR TO THE TRIAL DATE, SO THAT AN EVIDENTIARY HEARING MAY BE SCHEDULED IF NECESSARY.

THE CLERK'S OFFICE HAS AVAILABLE A VHS FORMAT VIDEO CASSETTE PLAYER AND TELEVISION FOR USE AT TRIAL. PLEASE BE ADVISED THAT YOU MUST PROVIDE A PERSON TO RUN THE EQUIPMENT DURING THE COURSE OF THE TRIAL.

ELECTRONIC VISUAL EVIDENCE PRESENTER

IN ADDITION TO THE VIDEO EQUIPMENT NOTED ABOVE , THE COURT HAS AVAILABLE A VISUAL EVIDENCE PRESENTER WHICH WILL ALLOW COUNSEL TO DISPLAY PHOTOS (NEGATIVES OR POSITIVES), DOCUMENTS, X-RAYS, AND 3-D OBJECTS, WITHOUT WIRES, ON TELEVISIONS PLACED THROUGHOUT THE COURTROOM. THIS EQUIPMENT IS AVAILABLE AT THE COURTHOUSES IN ALBANY, SYRACUSE AND BINGHAMTON. USE OF THE VISUAL PRESENTER MAY BE REQUIRED BY THE TRIAL JUDGE PRESIDING OVER YOUR CASE.

FOR FURTHER INFORMATION ON THE USE OF THIS EQUIPMENT, PLEASE CONTACT THE COURTROOM DEPUTY CLERK FOR THE ASSIGNED TRIAL JUDGE.